

# **SUMMARY**

## **City of Carrollton Mayor and Council Meeting**

**August 4, 2008**  
**6:00 p.m.**

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Public Safety Complex, Court/Council Chambers, 115 West Center Street, Carrollton, Georgia

### **I. CALL TO ORDER**

The Mayor and City Council met in regular session on Monday, August 4, 2008 at 6:00 p.m. in the Public Safety Annex Building, 115 West Center Street, Carrollton, Georgia. Mayor Wayne Garner called the meeting to order at 6:00 p.m. Members present: Councilmember Peter Balega, Councilmember Gerald Byrd, Councilmember Rusty Gray and Councilmember Mandy Maierhofer. Mayor Garner explained the meeting procedures to those in attendance.

### **II. INVOCATION**

Councilmember Byrd offered the invocation.

### **III. CITIZEN COMMENTS**

Mrs. Jacqueline Dost, Director of Keep Carroll Beautiful, expressed appreciation to the Mayor and Council and City Manager for their efforts in initiating a recycling program.

Mr. Spidey Lee inquired to the Mayor and Council as to why the recycling program was implemented. Ms. Dost explained why the recycling program was started and the benefits of the program. Ms. Pat Slug inquired as to whether the recycling program would result in fewer garbage pickups. Mayor Garner advised that we are not at that point yet.

### **IV. MINUTES (July 7, 2008)**

**Motion by Councilmember Gray seconded by Councilmember Maierhofer to approve the Minutes of the July 7, 2008 meeting of the Mayor and Council. Motion passed, (5-0).**

### **V. ITEMS OF DISCUSSION**

- 1. Rezoning Request: Rezone from R-20 (Single Family Residential) to PD (Planned Development)  
Property Location: 2014 Maple Street  
Petitioner: John Malloy**

Councilmember Maierhofer announced she was disqualified from participating in the discussion and from voting on the rezoning request; citing a conflict of interest as outlined by Georgia State Laws, due to the fact that her father is the applicant.

CM Coleman stated he wanted to inform the audience of the meaning of a PD (Planned Development) designation. CM Coleman advised that if a property is rezoned PD, it cannot be changed from its approved site plan, noting that a PD designation is site plan specific.

Mayor Garner explained the procedures for the public hearing.

A public hearing was held to receive citizen input on a request from petitioner John Malloy to rezone a 4.7 acre tract located at 2014 Maple Street from R-20 (Single Family Residential) to PD (Planned Development). Planning and Zoning Administrator CM Griffin reported that the initial proposed purpose was to develop a 15-lot residential subdivision. PZA Griffin stated that the Planning Commission had recommended denial of the request. PZA Griffin stated that since the Planning Commission's meeting the petitioner had submitted a revised site plan (copy given to each member of the Mayor and Council) reducing the number of units from 15 (fifteen) to 13 (thirteen), a revised

narrative which includes a self imposed condition relating to an architectural review committee and the removal of a detention pond from the initial site plan.

At this time Mayor Garner opened the public hearing to receive citizen input. Those speaking in favor:

Petitioner John Malloy, 100 Garrett Lane, gave a brief synopsis of the rezoning request. Malloy stated that two (2) tracts of land would be combined for the development of a 13-lot subdivision (*Garden Gate*) fronting on Maple Street and Sunset Boulevard.

Mr. John Gaskis, Vice President of Planning and Acquisition for Patrick Malloy Communities, presented a power point presentation about the proposed development (*Garden Gate*). Mr. Gaskis noted that 56% of existing properties in the surrounding area did not meet the R-20 standards for which they are zoned, also that several of the Maple Street properties were of mixed uses; including office-institutional. Mr. Gaskis stated that the development would hopefully attract residents that wanted to scale down in home and lot size but not quality with convenient access to the Sunset Hills Country Club amenities. Mr. Gaskis stated that this type of development might appeal to executives working in local industries or even to homeowners in the area desiring to scale back on size. Mr. Gaskis pointed out that *Garden Gate* would be considered a lifestyle community and shared photographs and details of the following features:

- Small lot with less lawn
- Gated Community
- Architecture feature of Master Suite on the main level
- High quality and finished style with the newest design features
- Small Park with Water Feature or Fire Pit Assembly Area
- Vehicular Access to Sunset Hills CC
- Intimate Streetscape with heavy landscaping, sidewalks, fences, low walls, front porches; etc.

Mr. Gaskis explained that the homes in the development will be comparable and consistent in style and price to other homes in the Sunset Hills area.

The only component the development differs from other homes in the area is that of the lot size. Mr. Gaskis stated that the homes would not be spec homes, but homes built as each lot is sold. In addition, any home built must meet the architectural guidelines and must be approved by the architectural review committee. Mr. Gaskis listed four reasons why the site is unique and should be considered somewhat differently than other sites offered for a Planned Development; as follows:

1. Main access is from Maple Street. Traffic will not increase in the Sunset Boulevard or to the Country Club area.
2. There are two (2) ways in and out of the project. This is good for safety purposes.
3. Lots are smaller in size that are closer to Maple Street and the lots are larger than those on Sunset Boulevard.
4. A well known architect will design homes and insure that homes follow the architectural guidelines.

At this time, Mr. Gaskis turned the presentation over to Mr. Dick Tisinger.

Mr. Dick Tisinger, attorney of Petitioner John Malloy; provided the Mayor and Council with a revised site plan reducing the number of units to be placed on the property from 15 to 13. Mr. Tisinger noted that the revision was made in response to City staff's recommendation at the Planning Commission Meeting advising the property would be more suitable for a 13 lot tract, rather than a 15 lot tract.

Mr. Tisinger further explained the characteristics of the revised 13-lot site plan and Mr. Malloy's wishes to further assure the City and neighbors to the development as to the quality and appearance of the homes and landscaping of the development. Mr. Tisinger noted that if the property is rezoned as requested, all material aspects of these guidelines will be incorporated into the architectural review committee guidelines to be enforced by a homeowner's association for the

development under their powers granted in the covenants and restrictions to be placed upon the property. Further adding that Mr. Malloy would include as a condition of a rezoning of the property as a planned development, the obligation to place at least one resident of the adjoining Sunset Hills development on the architectural committee.

Mr. Tisinger pointed out that the revised site plan given earlier to the Mayor and Council reduced the number of units to be placed on the property from 15 to 13. Mr. Tisinger noted the revision was made in response to City staff's recommendation to the Mayor and City Council for approval of the rezoning with a density more comparable to the immediate and nearby properties. Mr. Tisinger noted that Planning Commissioner Chris New had made a motion to accept the proposal if the plan was reduced to 13 units; however the motion failed. Mr. Tisinger shared written correspondence from Planning Commissioner New regarding his support of a revised site plan of the development which included the reduction from 15 lots to 13 lots. Mr. Tisinger reviewed the criteria of zoning decisions as set forth by Georgia State Law. Mr. Tisinger quoted state law in regards to several court cases (*Guhl v. Holcombe Bridge Road Corporation* and *Barrett v. Hanby*), concluding that in one case the courts found that an individual's right to the use of his property confronts the police power under which zoning is done; the balance the law strikes is that a zoning classification may only be justified if it bears a substantial relation to the public health, safety, morality or general welfare. Mr. Tisinger further added that he believes the newly revised 13 lot plan applies the *Guhl* factors in balancing the rights of the property owners and the public health, safety and welfare required by the *Hanby* case. Mr. Tisinger stated that he and the petitioner contend that a failure to rezone the property would not strike a fair balance between the owners of the subject properties in a "free and unfettered" manner as to any harm that the rezoning would inflict on the "public health, safety, morality or general welfare." Mr. Tisinger concluded that a failure to rezone the property with the revised 13-lot site plan would under these decisions and the facts as applied to this case, constitute an unjustified and confiscatory, unconstitutional failure to rezone the subject property. Mr. Tisinger stated that the development is unique and the "slippery slope" argument does not apply. Mr. Tisinger reiterated that he believes that the development of this property as proposed justifies itself on its own merits and is a good thing for the public welfare and does not adversely affect the public health, safety or general welfare of the neighborhood. Mr. Tisinger requested the Mayor and Council follow staff's recommendation and good quality growth standards and approve the rezoning.

Mr. Tommy Greer, 214 Sunset Boulevard spoke in favor of the request, citing that he felt the development would be very good for the neighborhood; including increasing the Sunset Hills Country Club Membership. Mr. Greer pointed out that had the development been built when he chose to relocate to Sunset Hills last year, he most likely would have purchased one of the lots. Mr. Greer stated that someone is going to build something there...right now as it is zoned, 10 "something's" can be built there and the street can be cut through. By approving the rezoning and permitting the 13-lot development, we could be assured of a quality built development. Mr. Greer stated he trusted Mr. Malloy's character and the development would reflect that. Mr. Greer pointed out that everyone at Sunset Hills property values were tied to the financial health of the Country Club. Mr. Greer stated that the Country Club's financial health is more fragile than it looks and we continue to need new members and participation. Mr. Greer mentioned the Athens Country Club for which Sunset Hills Country Club was now calling for a 17 million dollar assessment. Mr. Greer stated that he felt this was a situation that begged for compromise and Mr. Malloy has offered a compromise. Mr. Greer expressed his appreciation to the Mayor and Council for the opportunity to speak in favor of the rezoning.

Mayor Garner noted that he gave those speaking in favor thirty (30) minutes; therefore he would give those speaking opposed one (1) hour.

Those speaking opposed:

Mr. Jason Swindel, Attorney and resident of 2014 A Maple Street stated his property bordered the proposed development. Mr. Swindel noted that the issue was not with the contractor but the issue was with the density of the development. Mr. Swindel stated that keeping the property R-20 would keep with the historical aspect of the Sunset Hills Country Club area. Mr. Swindel pointed out the

number of homes in the Sunset Hill area that were sitting on the market and expressed that there were legitimate concerns of additional vacant lots if the proposed development were approved. Mr. Swindle stated there were currently large lots for sale in the area that could possibly be subdivided similar to the proposed development if the rezoning is approved. Mr. Swindle referred to the petition signed by 200 residents in the area that were opposed to the rezoning and asked the Mayor and Council take that into consideration. Mr. Swindle referred to developments (Habersham Place and Melrose Place) with adequate lot size than the proposed that were in close proximity to the Sunset Hills area. Mr. Swindle stated that he had heard the opposition's statement that the market wanted developments (smaller lots, etc.) such as the proposed but he personally had not heard of anyone wanting that type of development. Mr. Swindle briefly reviewed the criteria in determining whether rezoning is appropriate by Georgia State and Federal Law and pointed out that the property in question is not affected if not rezoned as requested. Mr. Swindle noted that the Supreme Courts (*Guhl v. Holcombe Bridge Road Corporation*) had found that in dealing in a rezoning issue such as this; the balancing test must be administered. Mr. Swindle stated that the principles interests are balanced if the zoning regulation results in relatively little benefit or gain to the public, while inflicting serious injury or loss to the owner; such regulation is confiscatory and void. In reviewing staff's analysis of the zoning standards, Mr. Swindle noted that standard number 4 states: "Are there substantial reasons why the property cannot and should not be used as currently zoned"? City Staff notes reflect the statement that the property could be used as currently zoned. Mr. Swindle stated that if you apply the Supreme Court Standards, you will find that the property is not significantly affected by it not being rezoned. Mr. Swindle reminded the Mayor and Council of the Planning Commission's unanimous decision to deny the rezoning of the property and requested the Mayor and Council do the same.

Dr. Eric Heine, 105 Melrose Park, read a letter from Dr. Tom Fitzgerald (336 Club Drive) opposing the rezoning which included the following statements: (Exact copy from Mr. Fitzgerald's letter)

1. *Having high-density homes located on less than ¼ acre of land is in sharp contrast to all the surrounding neighborhoods. This includes subdivisions on both sides of Maple Street (Melrose Park, Linda Lane, Heritage Hills and Sunset Hills). This contrast will tend to lessen the home values of the contiguous area.*
2. *Despite claims from the developer and his family that there is a huge need for new housing around Sunset Hills, there seems to be little objective data that supports this. The home at 427 Sunset Blvd. has been vacant for over two years. If the new zoning were to be passed, then the retention pond scheduled to be in the backyard of this property will guarantee that this home will remain vacant. Additionally, there have been several homes around Sunset Hills that have come on the market in the past 18 months. They have all remained unsold or pulled from the market. Certainly in today's shaky housing market, there seems to be little need for 15, \$400,000 homes. Were they not to sell, the developer will be forced to lower the price or change the standards, further deteriorating surrounding home values. Also, due to the high density of the homes, they will have less relative value than a similar home on one acre of land.*
3. *The concept that these homes will be purchased by retirees that want to downsize ignores the fact that due to the land limitations these homes will by necessity be multi-story. Most retirees are looking for single level homes so that steps cease to be a daily issue.*
4. *Previous projects around Sunset Hills are of a different caliber than the one currently proposed. The homes on Habersham, Golfview, Sunset Court and Fairway have all been developments of generally 1 acre or more per home site, with homes being of similar quality and spacing as their neighbors. The proposed development with homes close to the street, 15-foot separation between the houses and loss of green space in no way supports or mirrors the surrounding area.*
5. *One potential and unpreventable outcome could be the purchase of the 3-4 homes right at Maple Street (potentially less desirable and therefore less marketable) by parents who want to use them for their children while they are students at West Georgia. With mortgage payments of \$2200 to \$2400 per month, a four-bedroom home occupied by 8 college students becomes a great deal for the parents. Despite occupancy regulations it is hard to believe that the occupancy police can control this. Sixteen to twenty four (16 – 24) college students living there are not in the best interest of the local homeowners.*

6. *Finally the most worrisome aspect of this process is the extremely bad precedence that this type of development sets. Were this to pass, there are several multiple acre lots in Sunset Hills, Heritage Hills and Melrose that could likewise be developed with one home every quarter of an acre. The City Council would be hard pressed to deny similar future requests if this project is allowed to proceed. The long-term community implications of this decision are critical. This proposal will clearly beget others.*

Matthew Clay, 106 Habersham Place spoke opposed and referred to a letter he submitted to be included in the Mayor and Council Packet. Mr. Clay stated he was a former Planning Commissioner and had attended training to insure his zoning decisions were informed. Mr. Clay reported that one of the key points regarding zoning was to “never have a blue dot in the middle of a red area”; referring to spot zoning. Mr. Clay spoke of spot zoning and the court issues regarding the public’s benefit and the individual’s benefit when considering a rezoning issue. Mr. Clay referred to the courts underlying question of whether the zoning decision advances the health, safety and welfare of the community. Mr. Clay requested the Mayor and Council deny the request, and if done so there still could be a nice development on the property. Mr. Clay stated he believed the development under the current zoning could have 10.42 units (based on the gross density). Mr. Clay added that he knew Mr. Malloy and his work and felt assured of a nice quality development.

Russell Hughes, 431 Sunset Boulevard, spoke against the rezoning and read a statement explaining the history including the financial hardships experienced throughout the years of the Sunset Hills Country Club. Mr. Hughes spoke of the great programs the club now offers to people of all ages. Mr. Hughes stated that initially when Sunset Hills County Club was developed it was named Sunset Hills Estates. Mr. Hughes noted that an estate was defined as large spacious lots with one single dwelling built per lot. Mr. Hughes stated the petition with 185 names is reflective of the opinion that PUD’s and PD were not wanted, but want the property to remain as is. Mr. Hughes asked the Mayor and Council to deny the request.

Mr. Swindle stated he believed there were no further comments.

Mayor Garner asked Mr. Tisinger if he had anything further.

Mr. Tisinger stated that he didn’t believe that he had anything further but noted that several of the points mentioned by those opposed were addressed in the his earlier presentation. Mr. Tisinger reiterated that there should be a fair balance in the public interest. Mr. Tisinger addressed the point that the property could be developed for 10 units as suggested, but this could be any type of housing; including rental homes.

Clay Robinson, 451 Sunset Boulevard, spoke in opposition of the project and reported that there was interest from another party in purchasing the property in question.

Mr. Tisinger noted that the property owners were in attendance and reported that there were no contracts on the table.

At this time Mayor Garner asked City Attorney Conerly the next step if either party appealed the decision of the Mayor and Council on the rezoning issue. CA Conerly stated that any appeal would go before the Superior Court.

Tracy Stallings, 406 Bradley Street, spoke on behalf of friends of Sunset Hills. Mr. Stallings stated that the proposed development appears to be designed for the benefit of a handful of people at the detriment to many people. Mr. Stallings urged the Mayor and Council to listen to the people and vote to deny the rezoning

Mayor Garner announced that the opposing side has 20 minutes to rebut any statements.

Gail Alligood, 115 Fairway Drive, spoke opposed and asked if Mr. Malloy would consider putting fewer houses in the development.

Unidentified female speaking in opposition inquired to the City Attorney if his opinion would still hold if the citizens of Sunset Hills do not have representation on the Council for the rezoning vote. CA Conerly stated yes it would.

Andy Johnson, 416 Sunset Boulevard, cited several homes in the area that were vacant and for sale.

Johnny Burnham, 104 Habersham Place, reported that he worked for Southwire and knew that executives were not looking to live in projects of this type and noted they were living in Newnan and Atlanta. Mr. Burnham stated that Carrollton is a great place to live but feels the development is not going to lure people to move here. Mr. Burnham expressed concerns of setting precedence for future mistakes.

Jim Hughes, 545 Sunset Boulevard, stated that his issue is not about Mr. Malloy and his development work but about setting precedence with the density issue. Mr. Hughes posed the question: What is to stop homeowners in the area with larger lots to subdivide into much smaller lots? Mr. Hughes stated that Mr. Tisinger had stated that the issue was not a "slippery slope", and added he did not see how it was not a "slippery slope".

Shay Swindle, 2014 A Maple Street stated that she had made contact with the owners about purchasing the property and is still interested in buying the property.

Mr. Wallace spoke and said he represented the owners and noted that they are considering any written offer (real estate contract) on the property.

Ms. Vickie Morris, niece of property owner of 427 Sunset Boulevard which is up for sale, spoke in opposition. Ms. Morris stated she had overheard at this meeting of neighbors that had large parcels of land that had made statements that if the City approves the rezoning then they would apply to rezone and divide their respective lots.

Mr. Swindle asked the City Attorney if the Superior Court had the discretion of accepting an appeal of the Mayor and Council's decision. CA Conerly responded; no, there was a direct right of appeal.

At this time Mayor Garner closed the public hearing and asked if members of the Council had any questions. Councilmember Byrd inquired if the petitioner could narrow the number of lots from 13 to 10. Mr. Malloy responded that reducing the number of lots defeats the purpose. Councilmember Balega inquired about the removal of the detention pond. ACM Grizzard responded that that portion of the Sunset Hills area has always had a drainage problem and the developer has agreed that if the revised plan is approved to address and upgrade existing drainage issues in the area to hold any additional drainage from the development. ACM Grizzard pointed out that developments are solving drainage issues by other means rather than building on-site detention ponds which are prone to become mosquito infested. ACM Grizzard added that a retention pond would not be necessary as long as the developer's hydrology works and the flow does not adversely affect the downstream neighbors. There being no further discussion, Mayor Garner advised a motion was needed to either approve or deny the rezoning request. **Motion by Councilmember Gray, seconded by Councilmember Balega to approve the rezoning of the 4.70 acre tract located at 2014 Maple Street from R-20 (Single Family Residential) to PD (Planned Development) for the purpose of developing a 13-lot development as outlined in the revised site plan presented at the meeting with the condition that a green buffer be installed on the three (3) lots that abut Sunset Boulevard properties. Motion passed, (4-0 with Councilmember Maierhofer abstaining from the vote).**

## **2. Resolution 14-2008 Solid Waste Management Plan Adoption**

PZA Griffin presented for public comment and approval the proposed 2007-2017 Solid Waste Management Plan. PZA Griffin noted that the plan had been reviewed by both the Chattahoochee Flint Regional Development Center and the Georgia Department of Community Affairs. PZA Griffin reported that the plan was prepared in accordance with the Minimum Planning

Standards and Procedures for Solid Waste Management Plans established by the Georgia Comprehensive Solid Waste Management Act. A public hearing on the issue is required by the Act to receive citizen input. Councilmember Balega inquired as to the shredding process of trees. CM Coleman stated that we are moving forward in the process.

**There being no further discussion, motion by Councilmember Balega, seconded by Councilmember Gray to adopt Resolution 14-2008 approving the City of Carrollton Solid Waste Management Plan 2007-2017 as presented. Motion passed, (5-0).**

### **3. Resolution 15-2008 Community Agenda Transmittal**

PZA Griffin presented for public comment and approval the Community Agenda document; which is part of the 20-year Comprehensive Plan Update. PZA Griffin noted that the documents were prepared according to the Standards and Procedures for Local Comprehensive Planning and established by the Georgia Planning Act of 1989. PZA Griffin reported that the transmittal of the Community Agenda portion on the 20-year Comprehensive Plan Update must be approved by the Mayor and City Council before submission to the Chattahoochee Flint Regional Development Center and the Georgia Department of Community Affairs for official review.

**There being no further discussion, motion by Councilmember Gray, seconded by Councilmember Byrd to adopt Resolution 15-2008 approving the transmittal of the Community Agenda portion on the 20-year Comprehensive Plan Update as presented. Motion passed, (5-0).**

### **4. Ductile Iron Pipe Purchases**

Assistant City Manager Tim Grizzard reminded the Mayor and Council of their January 2007 vote to purchase pipe from American Cast Iron Pipe Company (ACIPCO) through negotiated pricing. ACM Grizzard reported that the experience with the purchase of Ductile Iron Piping has shown that the best price has been obtained when the price is negotiated and not through direct bid. ACM Grizzard stated that upon approval of this purchase agreement it was stated that when the pricing increased, the new pricing would be presented to the Mayor and Council for their approval. ACIPCO held their prices through the 2007-2008 fiscal year but has now notified the City of Carrollton of a pricing increase effective July 1, 2008 (FY 2009). ACM Grizzard notes that City Staff has checked the new pricing against recent direct bids and determined that the negotiated pricing is still the best purchasing arrangement for the City of Carrollton for the purchase of ductile iron pipe. ACM Grizzard reported that City staff recommends that the Mayor and Council approve the continued purchase of ductile iron pipe from the American Cast Iron Pipe Company **There being no further discussion, motion by Councilmember Balega, seconded by Councilmember Gray to approve the continued purchase of ductile iron pipe from the American Cast Iron Pipe Company. Motion passed, (5-0).**

### **5. Adoption Agreement Amendment to the City of Carrollton Retirement Plan**

CM Coleman reported that City Staff has researched elected official retirement plans in the State of Georgia. The study found that there are 276 entities (Cities, Authorities, and Commissions) that participate in the GMEBS Retirement Fund. Of these 276 entities, 139 offer a benefit to elected officials. This is approximately 50% of the membership offering a retirement benefit to their elected officials. CM Coleman reported that an elected official's retirement cost comparison and study was performed with the following consideration: Retro-effective date for current elected officials with a \$75 benefit multiplier with normal retirement age of 65. The cost to implement this proposed benefit for elected officials would be approximately \$17,000.00 per year. This includes the amortization of past credited service. **There being no further discussion, motion by Councilmember Byrd, seconded by Councilmember Gray to approve amending the retirement Plan to include a retirement benefit for elected officials with a retro-effective date for current elected officials with a \$75 benefit multiplier with normal retirement age of 65. Motion passed, (5-0).**

## **VI. MAYOR AND COUNCIL ANNOUNCEMENTS**

None

## **VII. CITY MANAGER ANNOUNCEMENTS**

None

**VIII. ADJOURN**

There being no further business to address, the meeting adjourned at 7:37 p.m.